

Introduced by Senator Moorlach

February 18, 2016

An act to amend Section 21524 of the Probate Code, relating to trusts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1265, as introduced, Moorlach. Marital deduction trusts.

Existing law regulates the interpretation and administration of wills, trusts, and estates. Existing law regulates the compliance of marital deduction gifts with the federal Internal Revenue Code. Existing law provides that if a marital deduction gift is made in trust, certain additional conditions apply to the marital deduction trust, including, among others, that the transferor's spouse is entitled to all of the income of the marital deduction property not less frequently than annually, as long as the spouse is alive. Existing law requires that in the case of qualified terminable interest property specified in certain provisions of the Internal Revenue Code, on termination of the interest of the transferor's spouse in the trust, all of the remaining accrued or undistributed income pass to the transferor's spouse, except as provided.

This bill would delete the provision relating to qualified terminable interest property described above and instead require that the term income, for purposes of the marital deduction property, be construed in a manner consistent with specified provisions of the Internal Revenue Code, and include a unitrust payment or other allocation of income determined pursuant to a reasonable apportionment of total investment return, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 21524 of the Probate Code is amended to read:

21524. If a marital deduction gift is made in trust, in addition to the other provisions of this chapter, each of the following provisions also applies to the marital deduction trust:

(a) The transferor's spouse is the only beneficiary of income or principal of the marital deduction property as long as the spouse is alive. Nothing in this subdivision precludes exercise by the transferor's spouse of a power of appointment included in a trust that qualifies as a general power of appointment marital deduction trust.

~~(b) Subject to subdivision (d), the~~ The transferor's spouse is entitled to all of the income of the marital deduction property not less frequently than annually, as long as the spouse is alive. *For purposes of this subdivision, income shall be construed in a manner consistent with subdivision (b) of Section 2056 and subdivision (f) of Section 2523 of the Internal Revenue Code and shall include a unitrust payment or other allocation of income determined pursuant to a reasonable apportionment of total investment return that meets the requirements of Section 643 of the Internal Revenue Code and the regulations adopted pursuant to that statute.*

(c) The transferor's spouse has the right to require that the trustee of the trust make unproductive marital deduction property productive or to convert it into productive property within a reasonable time.

~~(d) Notwithstanding Section 16347, in the case of qualified terminable interest property under Section 2056(b)(7) or Section 2523(f) of the Internal Revenue Code, on termination of the interest of the transferor's spouse in the trust all of the remaining accrued or undistributed income shall pass to the estate of the transferor's spouse, unless the instrument provides a different disposition that qualifies for the marital deduction.~~